

AUG 29 1983

ALEXANDER E. STEVAS,
CLERK

No. 82-1565

In The
Supreme Court of the United States
October Term, 1983

BACCHUS IMPORTS, LTD. and
EAGLE DISTRIBUTORS, INC.,

Appellants,

VS.

GEORGE FREITAS, Director of Taxation
of the State of Hawaii,

Appellee.

APPEAL FROM THE SUPREME COURT OF HAWAII

JOINT APPENDIX

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APPEAL DOCKETED MARCH 15, 1983
PROBABLE JURISDICTION NOTED JUNE 20, 1983

I N D E X

	Pages
Relevant Docket Entries	1
Stipulation of Facts in Case No. 1852	12
Stipulation of Facts in No. 1866	6
Appendix A, Stipulation of Facts in Case No. 1867	18

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RELEVANT DOCKET ENTRIES

Date	Proceedings
	In the Tax Appeal Court: No. 1852
1979 June 29	Complaint of Bacchus Imports, Ltd.
1979 July 18	Answer to Complaint of Bacchus
1979 August 20	Stipulation of Facts as to Bacchus
1979 October 25	Stipulation for Consolidation

In the Tax Appeal Court: No. 1862

- 1979 August 27 Complaint of Paradise Beverages, Inc.
- 1979 August 30 Answer to Complaint of Paradise Beverages
- 1979 October 25 Stipulation for Consolidation

In the Tax Appeal Court: No. 1866

- 1979 September 27 Complaint of Eagle Distributors, Inc.
- 1979 October 10 Answer to Complaint of Eagle Distributors
- 1979 October 25 Stipulation for Consolidation

In the Tax Appeal Court: No. 1867

- 1979 September 28 Complaint of Foremost-McKesson, Inc.
- 1979 October 10 Answer to Complaint of Foremost-McKesson
- 1979 October 25 Stipulation for Consolidation

In the Tax Appeal Court:
Nos. 1852, 1862, 1866 and 1867

- 1979 November 2 Stipulation of Facts as to Paradise Beverages
- 1979 November 7 Stipulation of Facts as to Foremost-McKesson
- 1979 November 20 Concurrent Opening Briefs (for all parties)
- 1979 December 19 Stipulation Amending Complaints in Nos. 1852, 1866 and 1867
- 1979 December 20 Concurrent Closing Briefs (for all parties)
- 1979 December 21 Stipulation of Facts as to Eagle Distributors

- 1980 January 21 Memorandum of Objections by Bacchus and Eagle to Proposed Decision and Order
- 1980 January 29 Order Overruling Objections; Decision and Order in favor of State of Hawaii
- 1980 February 7 Notice of Appeal by Bacchus and Eagle
- 1980 February 14 Notice of Appeal by Foremost-McKesson
- 1980 February 26 Notice of Appeal by Paradise

In the Hawaii Supreme Court: No. 7802

- 1980 March 24 Record on Appeal
- 1980 June 20 Opening Brief of Foremost-McKesson
- 1980 August 22 Opening Brief of Bacchus and Eagle
- 1980 August 25 Joinder in Opening Briefs by Paradise
- 1980 December 22 Answering Brief
- 1981 February 20 Reply Briefs of Bacchus, Eagle and Foremost-McKesson
- 1982 August 12 Case argued and submitted
- 1982 December 23 Opinion of the Court affirming the Tax Appeal Court
- 1983 January 5 Judgment of Appeal
- 1983 March 3 Notice of Appeal filed by Bacchus and Eagle
- 1983 March 15 Appeal Docketed in U. S. Supreme Court
- 1983 June 20 Probable Jurisdiction Noted

WHAT MAY BE FOUND
IN THE APPENDIX TO THE
JURISDICTIONAL STATEMENT

1. Opinion of the Hawaii Supreme Court filed
December 23, 1982 (656 P. 2d 724)_____A-1 AJS
 2. Opinion of the Tax Appeal Court filed Jan-
uary 29, 1980 (unreported) _____A-41 AJS
 3. Judgment on Appeal filed January 5, 1983____A-56 AJS
 4. Notice of Appeal by Bacchus Import Ltd.
and Eagle Distributors, Inc. filed March 3,
1983 _____A-59 AJS
-

Of Counsel:

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Attorney for Bacchus Imports,
Ltd. and Eagle Distributors

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

CASE NO. 1852

STIPULATION OF FACTS IN NO. 1866 AND ORDER

BACCHUS IMPORTS, LTD.,

Plaintiff,

vs.

GEORGE FREITAS, Director of Taxation,
Defendant.

CASE NO. 1862

PARADISE BEVERAGES, INC.,

Plaintiff,

vs.

GEORGE FREITAS, Director of Taxation,
Defendant.

CASE NO. 1866

EAGLE DISTRIBUTORS, INC.,

Plaintiff,

vs.

GEORGE FREITAS, Director of Taxation,

Defendant.

CASE NO. 1867

FOREMOST-McKESSON, INC., dba McKESSON
WINE & SPIRITS, CO.,

Plaintiff,

vs.

GEORGE FREITAS, Director of Taxation,

Defendant.

STIPULATION OF FACTS IN NO. 1866

Plaintiff Eagle Distributors, Inc. and defendant George Freitas herewith stipulate to the following facts which may be deemed admitted and proved in this action without the submission of further evidence; provided, however, that further evidence consistent with the facts herein stipulated, or other evidence, may be introduced upon agreement of the parties.

1. Eagle Distributors, Inc. is a corporation organized and existing under the laws of the State of Hawaii, whose principal place of business is in Honolulu, Hawaii, with other places of business at Hilo, Kailua-Kona, Kahului, and

Lihue, in the State of Hawaii. It is licensed by the State of Hawaii as a wholesaler of beer and wine pursuant to § 244-2 of the said Hawaii Revised Statutes. It also holds an Importer's License, No. HI-I-796, and Wholesaler's Licenses for each of its locations, issued by the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury pursuant to Title 27, Section 204 of the United States Code.

2. Defendant George Freitas is the Director of Taxation of the State of Hawaii, and in such capacity is charged with administering the Liquor Tax Law of the State of Hawaii (Chapter 244 of the said Hawaii Revised Statutes, hereinafter referred to as "the Liquor Tax Law").

3. For more than five years prior to September 27, 1979, plaintiff has filed with defendant each month as the same were due liquor tax returns on the form and in the manner prescribed by the Liquor Tax Law, and has each month paid the amount of tax shown on such return, in the total amount for the five year period August 1974-July 1979 of \$10,744,047.00.

4. On August 31, 1979, plaintiff sent to defendant together with its liquor tax return and payment for the month of July, 1979, a letter protesting that payment and all payments of such tax over the previous five years, a true copy of which is attached hereto as Exhibit A.

5. This action was commenced on September 27, 1979.

6. Plaintiff imports beer and wine into the State of Hawaii, warehouses such beer and wine on premises licensed by agencies of both the United States and the State of Hawaii, and sells such beer and wine at wholesale.

7. Beer imported into Hawaii by plaintiff is manufactured in California or one of several other States, and shipped overland to the ports of Oakland or Los Angeles for shipment by ocean freighter to plaintiff.

8. Wine imported by plaintiff into Hawaii originates in foreign countries and is first cleared through United States Customs at Honolulu, Hawaii.

9. All of such wine and beer is imported in the cartons or cases in which it was originally packed and shipped, and when sold by the case is sold by plaintiff in such original cartons or cases. Beer is sold only by the case; wine is occasionally sold by the bottle or withdrawn as a sample, and is pulled for such occasion from the case in which it was shipped or from the shelves in plaintiff's warehouses reserved for storage of less than full cases.

10. Such wine and beer is purchased by plaintiff before its arrival in Honolulu from its producer or from the agent of its producer.

11. Plaintiff's "wholesale price" for wine and beer imported by it is determined by adding a percentage markup to its "landed cost" for such wine and beer. Plaintiff's landed cost for such wine and beer is determined by adding to its original cost in dollars the following costs:

(1) Inland freight to the port of shipment to Honolulu;

(2) Container and wharfage charges at the port of loading, as charged by the shipping company;

(3) Ocean (or air, as the case may be) freight to Honolulu (including any currency adjustment fees added by the shipping company);

- (4) Wharfage fees at Honolulu;
- (5) Drayage charges for transportation to plaintiff's warehouse;
- (6) Customs brokerage fees;
- (7) Customs duties and internal revenue taxes as applicable; and
- (8) Warehouse handling charges.

12. Plaintiff sells wine and beer to licensees in the State of Hawaii at a price equal to its wholesale price as above determined, plus the twenty percent tax imposed by Section 244-4 of the Liquor Tax Law, plus the one-half percent tax imposed by Section 237-13 of the said Hawaii Revised Statutes.

13. Sales to licensees are upon invoices due and payable in thirty days. Plaintiff is obligated by the Liquor Tax Law to file its return and remit the twenty percent tax on its taxable sales by the close of the month following the month for which sales are reported. The tax is due and owing whether or not plaintiff's customers have paid their invoices as of that date. A substantial number of plaintiff's customers take more than thirty days to pay their bills.

14. The only liquors manufactured commercially in Hawaii are okolehao, a type of brandy distilled from the native ti plant; sake, various flavored fruit liqueurs; and a fruit wine made from pineapple. At present, all of Hawaii's commercially available whisky, gin, rum, vodka, and other spirits (except for okolehao), wines made from grapes, and beer are imported into the State. The Liquor

Tax Law exempts okolehao and fruit wines made in Hawaii from the twenty percent liquor tax until July, 1981.

15. After imposition of the 20% Hawaii Liquor Tax, imported wines and spirits (particularly champagne, whose federal duty and tax rate is approximately ten times that of still wine) are rendered more expensive than comparable domestic products, all other things being equal.

16. The Hawaii Liquor Tax, in effect, places a heavier tax on those imports which come from the farthest away. It does this by adding a surcharge of twenty percent to the cost of freight to bring the imported liquor to Hawaii, so that for example, wines from France (half-way around the world from Hawaii) are taxed significantly more than their equivalents produced in and imported from California.

17. The effect of the tax in this regard can be illustrated simply by showing the net result on the price to the customer of an increase of \$1.00 in the cost (F.O.B. the winery) of a bottle of French, Californian, and Hawaiian wine, respectively. In a typical case, for every dollar of increase in the cost of a French wine, the Hawaii consumer will end up paying \$3.23 more; in the case of a California wine, he will pay \$2.38 more, while in the case of a Hawaiian wine, he will pay only \$1.91 more. These represent increases of 223%, 138% and 91%, respectively, with the most burdensome increase being borne by the foreign import, and the next most burdensome increase being borne by the domestic import. Of these increases, the portion represented by the Hawaii Liquor Tax is \$.65, \$.47 and \$.00, respectively.

18. Plaintiff has fully complied with all applicable federal licensing statutes and regulations, has paid all current federal licensing fees and occupational taxes, and has acquired and presently holds from the federal government the right to import and to sell at wholesale wine and malt beverages.

19. Exhibit K to the Stipulations in Case No. 1852 is a true copy of pages 9-13 of a publication, "1978 Tax Briefs", compiled by the Distilled Spirits Council of the United States and published in 1979. It gives in summary form the amounts of the gallonage taxes on distilled spirits, wine and beer imposed as of 1978 by the 32 states (and the District of Columbia) which have, like Hawaii, a licensing system to control the importation of liquor. (The other 18 states have state monopoly systems, in which the state imports and sells all liquor itself and takes a specified markup to include both profit and taxes.)

DATED: Honolulu, Hawaii, December 20, 1979.

Stuart A. Kaneko
for ALLAN S. HALEY
Attorney for Bacchus and Eagle

Allan S. Chock
Attorney for Freitas

Approved and so Ordered:

/s/ Yasutaka Fukushima
Judge of the above entitled court

(Caption Omitted)

CASE NO. 1852

STIPULATION OF FACTS

Plaintiff and defendant hereby stipulate to the following facts which may be deemed admitted and proved in this action without the submission of further evidence; provided, however, that further evidence consistent with the facts herein stipulated, or other evidence, may be introduced upon agreement of the parties.

1. Bacchus Imports, Ltd. is a corporation, organized and existing under the laws of the State of Hawaii, whose principal place of business is in Honolulu, Hawaii. It is licensed by the State of Hawaii as a wholesaler of beer and wine pursuant to § 281-31 of the Hawaii Revised Statutes (1968), as amended, and as a permittee pursuant to § 244-2 of the said Hawaii Revised Statutes. It also holds an Importer's License, No. HI-I-841, and a Wholesaler's License No. HI-P-2946, issued by the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury pursuant to Title 27, Section 204 of the United States Code.

2. Defendant George Freitas is the Director of Taxation of the State of Hawaii, and in such capacity is charged with administering the Liquor Tax Law of the State of Hawaii (Chapter 244 of the said Hawaii Revised Statutes, hereinafter referred to as "the Liquor Tax Law").

3. Beginning on or about January 30, 1978, plaintiff has filed with defendant each month as the same were due

liquor tax returns on the form and in the manner prescribed by the Liquor Tax Law, and has each month paid the amount of tax shown on such return, in the total amount of \$75,060.22. Exhibits A through I attached are true and correct copies of such tax returns filed by plaintiff up to the time of commencement of this action.

4. On May 30, 1979, plaintiff sent to defendant, together with its liquor tax return and payment for the month of April 30, 1979, a letter protesting that payment and all previous payments of such tax, a true copy of which is attached hereto as Exhibit J.

5. This action was commenced on June 29, 1979.

6. Plaintiff imports wine and beer into the State of Hawaii, warehouses such wine and beer on premises licensed by agencies of both the United States and the State of Hawaii, and sells such wine and beer at wholesale.

7. Wine and beer imported into Hawaii by plaintiff comes into the State via three different routes:

(1) Wine and beer originating in foreign countries whose first port of entry under the United States Customs laws is Honolulu, Hawaii;

(2) Wine and beer originating in foreign countries whose first port or place of entry under the United States Customs laws is a port or place other than Honolulu, Hawaii; and

(3) Wine and beer originating in one of the forty-nine other States of the United States.

8. All of such wine and beer is imported in the cartons or cases in which it was originally packed and

shipped, and when sold by the case is sold by plaintiff in such original cartons or cases. Beer is sold only by the case; wine is occasionally sold by the bottle or withdrawn as a sample, and is pulled for such occasion from the case in which it was shipped or from the shelves in plaintiff's warehouses reserved for storage of less than full cases.

9. Wine and beer whose first customs port of entry is Honolulu is purchased by plaintiff from its foreign producer or shipper, or from the agent of such foreign producer or shipper, and is received in Honolulu at Pier 39, Foreign Trade Zone No. 9, which is a duly authorized foreign trade zone pursuant to Title 19, Chapter 1A of the United States Code. It is unloaded and stored in bond in either plaintiff's own leased area within such Zone or in the general public storage area operated by the Zone itself. Customs duties on such wine and beer are not paid until the wine or beer is subsequently withdrawn from such bonded storage.

10. Wine and beer first brought into the United States at a place other than Honolulu is imported (and duty on it is paid) by an importer other than plaintiff. Plaintiff subsequently purchases such wine or beer from such primary importer and has it shipped to Honolulu, where it is stored in plaintiff's non-bonded storage facilities until sold or otherwise used.

11. Wine and beer originating in one of the other states of the United States is purchased by plaintiff from its producer or from the agent of its producer and is shipped and stored in the same manner described in paragraph 11 above.

12. Plaintiff's "wholesale price" for wine and beer imported by it is determined by adding a percentage mark-up to its "landed cost" for such wine and beer. Plaintiff's landed cost for such wine and beer is determined by adding to its original cost in dollars the following costs:

(1) Inland freight to the port of shipment to Honolulu;

(2) Ocean (or air, as the case may be) freight to Honolulu (including any currency adjustment fees added by the shipping company);

(3) Wharfage fees at Honolulu;

(4) Drayage charges for transportation to plaintiff's warehouse;

(5) Customs brokerage fees;

(6) Customs duties and internal revenue taxes; and

(7) Warehouse handling charges.

13. Plaintiff sells wine and beer to licensees in the State of Hawaii at a price equal to its wholesale price as above determined, plus the twenty percent tax imposed by Section 244-4 of the Liquor Tax Law, plus the one-half percent tax imposed by Section 237-13 of the said Hawaii Revised Statutes.

14. Sales to licensees are upon invoices due and payable in thirty days. Plaintiff is obligated by the Liquor Tax Law to file its return and remit the twenty percent tax on its taxable sales by the close of the month following the month for which sales are reported. The tax is due and owing whether or not plaintiff's customers have paid their invoices as of that date. A substantial number

of plaintiff's customers take more than thirty days to pay their bills.

15. The only liquors manufactured commercially in Hawaii are okolehao, a type of brandy distilled from the native ti plant; various flavored fruit liquers; sake; and a fruit wine made from pineapple. At present, all of Hawaii's commercially available whisky, gin, rum, vodka and other spirits (except for okolehao), wines made from grapes, and beer are imported into the State. The Liquor Tax Law exempts okolehao and fruit wines made in Hawaii from the twenty percent liquor tax until July, 1981.

16. After imposition of the 20% Hawaii Liquor Tax, imported wines and spirits (particularly champagne, whose federal duty and tax rate is approximately ten times that of still wine) are rendered more expensive than comparable domestic products, all other things being equal.

17. The Hawaii Liquor Tax, in effect, places a heavier tax on those imports which come from the farthest away. It does this by adding a surcharge of twenty percent to the cost of freight to bring the imported liquor to Hawaii, so that for example, wines from France (halfway around the world from Hawaii) are taxed significantly more than their equivalents produced in and imported from California.

18. The effect of the tax in this regard can be illustrated simply by showing the net result on the price to the consumer of an increase of \$1.00 in the cost (F. O. B. the winery) of a bottle of French, Californian, and Hawaiian wine, respectively. In a typical case, for every dollar of increase in the cost of a French wine, the Hawaii consumer will end up paying \$3.23 more; in the case of a

California wine, he will pay \$2.38 more, while in the case of a Hawaiian wine, he will pay only \$1.91 more. These represent increases of 223%, 138% and 91%, respectively, with the most burdensome increase being borne by the foreign import, and the next most burdensome increase being borne by the domestic import. Of these increases, the portion represented by the Hawaii Liquor Tax is \$.65, \$.47 and \$.00, respectively.

19. Plaintiff has fully complied with all applicable federal licensing statutes and regulations, has paid all current federal licensing fees and occupational taxes, and has acquired and presently holds from the federal government the right to import and to sell at wholesale wine and malt beverages.

20. Exhibit K attached is a true copy of pages 9-13 of a publication, "1978 Tax Briefs", compiled by the Distilled Spirits Council of the United States and published in 1979. It gives in summary form the amounts of the gallonage taxes on distilled spirits, wine and beer imposed as of 1978 by the 32 states (and the District of Columbia) which have, like Hawaii, a licensing system to control the importation of liquor. (The other 18 states have state monopoly systems, in which the state imports and sells all liquor itself and takes a specified markup to include both profit and taxes.)

DATED: Honolulu, Hawaii, August 20, 1979.

/s/ Allan S. Haley
Attorney for Plaintiff

/s/ Allan S. Chock
Attorney for Defendant

APPENDIX A

(Caption Omitted)

CASE NO. 1867

STIPULATION OF FACTS

Plaintiff and defendant hereby stipulate to the following facts which may be deemed admitted and proved in this action without the submission of further evidence; provided, however, that further evidence consistent with the facts herein stipulated, or other evidence, may be introduced upon agreement of the parties.

1. FOREMOST-McKESSON, INC., is a Maryland corporation registered to do business in the State of Hawaii, and doing business as McKESSON WINE & SPIRITS CO., a division of FOREMOST-McKESSON, INC. It is licensed by the Liquor Commission for each County of the State of Hawaii as a liquor wholesaler (General License) pursuant to Hawaii Rev. Stat. § 281-31 (1976 Repl.) and by the Department of Taxation for the State of Hawaii as a permittee pursuant to Hawaii Rev. Stat. § 244-2 (1976 Repl.). It also holds an importer's License and a Wholesaler's License for each County of the State of Hawaii issued by the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury pursuant to 27 U. S. C. § 204.

2. Defendant GEORGE FREITAS is the Director of Taxation of the State of Hawaii, and in such capacity is charged with administering the Liquor Tax Law of the State of Hawaii (Hawaii Rev. Stat. §§ 244-1 *et seq.* [1976 Repl.] hereinafter referred to as "the Liquor Tax Law").

3. Since 1939, Plaintiff has each month, as the same were due, filed liquor tax returns with Defendant and his predecessors in office through the State Tax Collector for each District Office of the Department of Taxation, and has each month paid the amount of tax shown on such return. The total amount of such payments made from September 30, 1974 to date exceeds \$26,000,000.00.

4. On September 6, 1979, Plaintiff sent to the State Tax Collector for each District Office of the Department of Taxation of the State of Hawaii a letter, together with its liquor tax return and payment for the month of August, 1979, protesting said payment and all previous payments of such tax, true copies of which are attached to the Complaint filed herein as Exhibits "A", "B", "C", and "D". Plaintiff has also submitted identical letters of protest with every liquor tax return filed as the same were due for each month subsequent to August 1979.

5. This action was commenced on September 29, 1979 within thirty days from the date of such payments and protests.

6. Plaintiff imports liquor (as that term is defined in Hawaii Rev. Stat. § 281-1 (1976 Repl.)) into the State of Hawaii, warehouses such liquor on premises licensed by agencies of both the United States and the State of Hawaii, and sells such liquor at wholesale.

7. Liquor imported into Hawaii by Plaintiff comes into the State via three different routes:

(1) Liquor originating in foreign countries whose first port of entry under the United States Customs laws is Honolulu, Hawaii;

(2) Liquor originating in foreign countries whose first port or place of entry under the United States Customs laws is a port or place other than Honolulu, Hawaii; and

(3) Liquor originating in one of the forty-nine other States of the United States.

8. All such liquor is imported in the cartons or cases in which it was originally packed and shipped, and when sold by the case it is sold by Plaintiff in such original cartons or cases. Beer is sold only by the case; wine is generally sold by the case, but is also sold by the bottle, and other liquors are sold by the case and by the bottle. When wine and other liquors are sold by the bottle, they are pulled for such occasion from the case in which they were shipped or from the shelves in Plaintiff's warehouses reserved for storage of less than full cases.

9. Wine and beer whose first customs port of entry into the United States is Honolulu are purchased by Plaintiff from its foreign producer or shipper, or from the agent of such foreign producer or shipper, and are received in Honolulu at Fort Armstrong or Pier 51A. Customs duties on such wine and beer are paid by Plaintiff upon receipt at Fort Armstrong or Pier 51A.

10. Liquors other than wine and beer (i. e., brandy, whiskey, rum, gin, vodka and other spirits) whose first customs port of entry into the United States is Honolulu are purchased by Plaintiff from its foreign producer or shipper, or from the agent of such foreign producer or shipper, are received at Fort Armstrong or Pier 51A and are transported to Plaintiff's warehouse where they are unloaded and stored in bond. Customs duties on such

liquors are not paid until they are subsequently withdrawn from such bonded storage.

11. Liquor whose first customs port of entry into the United States is a place other than Honolulu is imported (and duty on it is paid) by an importer other than Plaintiff. Plaintiff subsequently purchases such liquor from such primary importer and has it shipped to Honolulu, where it is stored in Plaintiff's non-bonded storage facilities until sold or otherwise used. The purchase price of such liquor includes the customs duties paid by the primary importer.

12. Liquor originating in one of the other states of the United States is purchased by Plaintiff from its producer or from the agent of its producer and is shipped and stored in the same manner described in Paragraph 11 above.

13. Plaintiff's "wholesale price" for liquor imported by it is determined by adding a percentage markup to its "landed cost" for such liquor. Plaintiff's landed cost for such liquor is determined by adding to its original (F. O. B.) cost in dollars the following costs:

(1) Inland freight to the port of shipment to Honolulu;

(2) Ocean (or air, as the case may be) freight to Honolulu (including any currency adjustment fees added by the shipping company);

(3) Wharfage fees at Honolulu;

(4) Drayage charges for transportation to Plaintiff's warehouse;

- (5) Warehouse handling charges;
- (6) Customs brokerage fees;
- (7) United States internal revenue service (gallorage) taxes; and
- (8) United States customs duties.

14. Plaintiff sells liquor in the State of Hawaii to licensees and others who are by law authorized to resell but are not by law required to hold a license (i. e., military post exchanges) at a price equal to its wholesale price as above determined, plus the twenty percent tax imposed by Section 244-4 of the Liquor Tax Law, plus the one-half percent tax imposed by Hawaii Rev. Stat. § 237-13 (1978 Supp.).

15. Sales to licensees are upon invoices due and payable in thirty days. Plaintiff is obligated by the Liquor Tax Law to file its return and remit the twenty percent tax on its taxable sales by the close of the month following the month for which sales are reported. The tax is due and owing whether or not Plaintiff's customers have paid their invoices as of that date. A number of Plaintiff's customers take more than thirty days to pay their bills.

16. The only liquors manufactured commercially in Hawaii are okolehao, a type of whiskey distilled from the native ti plant; various flavored fruit liquors; sake, a beer made from rice; and a fruit wine made from pineapple. At present, all of Hawaii's commercially available whiskey, gin, rum, vodka and other spirits (except for okolehao), wines made from grapes, and beer (except for sake) are imported into the State. The Liquor Tax Law

exempts okolehao and fruit wines made in Hawaii from the twenty percent liquor tax until July, 1981.

17. After imposition of the 20% Hawaii Liquor Tax, imported liquor (particularly champagne, whose federal duty and tax rate is approximately ten times that of still wine) are rendered more expensive than comparable domestic products, all other things being equal.

18. The Hawaii Liquor Tax, in effect, places a heavier tax on those imports which come from the farthest away. It does this by adding a surcharge of twenty per-cent to the cost of freight to bring the imported liquor to Hawaii, so that for example, wines from France (halfway around the world from Hawaii) are taxed significantly more than their equivalents produced in and imported from California.

19. The effect of the Hawaii Liquor Tax can be illustrated simply by showing the net result on the price to the consumer of an increase of \$1.00 in the cost (F. O. B. the winery) of a bottle of French, California, and Hawaiian wine, respectively. In a typical case, for every dollar of increase in the cost of a French wine, the Hawaii consumer will end up paying \$3.23 more; in the case of a California wine, he will pay \$2.38 more, while in the case of a Hawaiian wine, he will pay only \$1.91 more. These represent increases of 223%, 138% and 91%, respectively, with the most burdensome increase being borne by the foreign import, and the next most burdensome increase being borne by the domestic import. Of these increases, the portion represented by the Hawaii Liquor Tax is \$.65, \$.47, and \$.00, respectively.

20. Plaintiff has fully complied with all applicable federal licensing statutes and regulations, has paid all current federal licensing fees and occupational taxes, and has acquired and presently holds from the federal government the right to import and to sell at wholesale liquor beverages.

DATED: Honolulu, Hawaii, Nov. 7, 1979.

/s/Bruce C. Bigelow
Michael R. Marsh
Attorneys for Plaintiff

/s/ Allan S. Chock
Attorney for Defendant
